

ARKANSAS SUPREME COURT

Nos. CR 06-1173

NOT DESIGNATED FOR PUBLICATION

WILLIE REYNOLDS
Appellant

v.

STATE OF ARKANSAS
Appellee

Opinion Delivered November 30, 2006

PRO SE MOTION FOR EXTENSION
OF TIME TO FILE BRIEF AND FOR
APPOINTMENT OF COUNSEL
[CIRCUIT COURT OF PULASKI
COUNTY, CR 89-2309, HON. JOHN
LANGSTON, JUDGE]

APPEAL DISMISSED; MOTION
MOOT.

PER CURIAM

In 1992, appellant Willie Reynolds was found guilty by a jury of capital murder and sentenced to life imprisonment without parole. We affirmed. *Reynolds v. State*, 310 Ark. 688, 840 S.W.2d 795 (1992). Appellant subsequently filed in federal court a petition for writ of *habeas corpus* which resulted in that court's issuing a conditional writ on the ground that appellant should have been afforded a competency hearing in the trial court. Pursuant to the conditional writ, the trial court ordered a mental evaluation in 1997, and based on that evaluation, appellant was found unfit to proceed. After treatment at the Arkansas State Hospital, the court was advised that appellant had improved and was fit to proceed. The court held a second competency hearing, found appellant competent, and scheduled a new trial for him. Before the trial was held, however, appellant pled guilty to a reduced charge of murder in the first degree and was sentenced to thirty years' imprisonment. The judgment of conviction was entered on October 7, 1998. He did not challenge

the judgment or sentence under Rule 37.1, our postconviction rule.

On May 22, 2006, more than seven and one-half years after the judgment was entered, appellant filed in the trial court a *pro se* petition pursuant to Ark. Code Ann. §16-90-111 (Repl. 2006). The trial court denied the petition, and appellant has lodged an appeal in this court from the order.

Now before us is appellant's motion for extension of time to file his brief and for appointment of counsel. We dismiss the appeal because it is clear that appellant could not prevail on appeal. The motion is moot.

This court has consistently held that an appeal of the denial of postconviction relief will not be permitted to go forward where it is clear that the appellant could not prevail. *Pardue v. State*, 338 Ark. 606, 999 S.W.2d 198 (1999) (*per curiam*); *Seaton v. State*, 324 Ark. 236, 920 S.W.2d 13 (1996) (*per curiam*); *Harris v. State*, 318 Ark. 599, 887 S.W.2d 514 (1994) (*per curiam*); *Reed v. State*, 317 Ark. 286, 878 S.W.2d 376 (1994) (*per curiam*).

In the petition filed in the trial court, appellant contended that the sentence imposed on him was illegal, which is a claim within the purview of Criminal Procedure Rule 37.1. Such claims must be raised in a petition under the rule filed in the trial court within ninety days of the date of entry of judgment if the conviction was obtained on a plea of guilty. Ark. R. Crim. P. 37.2; *see Reed v. State*, *supra* (holding that Ark. R. Crim. P. 37.1 superseded the time limits imposed in Ark. Code Ann. § 16-90-111 for correction or reduction of a sentence). The time limits set out in Rule 37.2 are jurisdictional in nature, and the circuit court may not grant relief on a untimely petition for postconviction relief. *Maxwell v. State*, 298 Ark. 329, 767 S.W.2d 303 (1989) (*per curiam*). Appellant did not file his petition under the rule within the time period allowed, and thus the court

did not err when it dismissed the petition.

Appeal dismissed; motion moot.

Glaze, J., not participating.